

1       licensee.

2                   Thank you.

3                   JUDGE CHACHKIN: Well, we'll see what the evidence  
4       is.

5                   Mr. Bernthal?

6                   MR. BERNTHAL: We're getting the witness, Your  
7       Honor.

8                   JUDGE CHACHKIN: All right. Who is the first  
9       witness?

10                  MR. BERNTHAL: Charles Giddens, Your Honor.

11                  (Pause.)

12                  JUDGE CHACHKIN: Mr. Giddens, would you step  
13       forward, please? Raise your right hand.

14       Whereupon,

15                               CHARLES GIDDENS

16       having been first duly sworn, was called as a witness herein  
17       and was examined and testified as follows:

18                  JUDGE CHACHKIN: Please be seated.

19                               DIRECT EXAMINATION

20                  BY MR. BERNTHAL:

21                  Q     Good morning, Mr. Giddens.

22                  A     Good morning.

23                  Q     Would you please state your name and address for  
24       the record?

25                  A     Charles Giddens. Actually, I have two addresses:

Heritage Reporting Corporation  
(202) 628-4888

1 927 Bracee Bend, Naples, Florida, or 1011 Tosten Road,  
2 McLean, Virginia.

3 Q And, Mr. Giddens, would you briefly describe your  
4 educational background for the record?

5 A I have an undergraduate degree for the University  
6 of Georgia, 1966; attended graduate school in '67.

7 Q What is your current employment position?

8 A I'm a managing director of Media Venture Partners,  
9 a radio and television brokerage firm, in Washington.

10 Q Mr. Giddens, we'd like to hear what your  
11 experience is in the radio broadcasting business.

12 Could you go back to your early days in the  
13 industry and bring us forward, please?

14 A I started in the business as a want-to-be disk  
15 jockey at 13, and was a manager at 21; became an owner at  
16 22, and have owned or managed about 73 stations in my  
17 career. Turned broker in 1984, and have done about \$2  
18 billion worth of sales.

19 Q Now, you referred to 73 stations. Have you been  
20 the licensee of 73 stations?

21 A Managed or owned. The preponderance probably  
22 managed. Some 25 or so I've actually had the licensing,  
23 license for.

24 Q Have you had experience in constructing new  
25 stations?

1 A I've built a number from the ground up, yes.

2 Q Have you had experience in operating turnaround  
3 stations?

4 A Yes.

5 Q Have you done any appraisal work in the industry?

6 A Yes. Quite a lot.

7 Q Would you detail that, please, for the record?

8 A In different times in my career, depending on the  
9 economics of what's going in around us, appraisals become  
10 very important. In the early nineties, they were extremely  
11 important as the banks tried to ascertain where their  
12 investments were. But we, as a firm, are probably doing 3  
13 billion.

14 Q I'm sorry?

15 A As a firm, we've done about 3 billion and I --

16 Q Three billion in appraisals?

17 A Yes.

18 Q Thank you.

19 And which bank lenders did you represent in the  
20 appraisal context?

21 A Represented Fleet, Bay Bank, Bank of Boston.

22 Q Are these prominent lenders in the industry?

23 A At that time the primary lenders.

24 Q Have you ever held a position as a court appointed  
25 fiduciary?

1 A Yes, I have.

2 Q Have you ever held an FCC license in that  
3 capacity?

4 A Yes, I have.

5 Q Have you ever testified before in an FCC  
6 proceeding?

7 A Twice.

8 Q Twice before.

9 Tell us about --

10 JUDGE CHACHKIN: Are you going to ask him about  
11 the proceedings?

12 MR. BERNTHAL: About the proceedings?

13 JUDGE CHACHKIN: Yes, he testified.

14 MR. BERNTHAL: Yes.

15 BY MR. BERNTHAL:

16 Q What proceedings did you testify in, Mr. Giddens?

17 A One of them had to do with the requirements for a  
18 construction period and a rough valuation of its value in  
19 Louisiana, and I'm not sure what the other one was right  
20 now. Too many, too many days since then.

21 Q But --

22 A As an expert witness.

23 Q As an expert witness in both cases?

24 A Yes.

25 Q Mr. Giddens, would you describe the business of

Heritage Reporting Corporation  
(202) 628-4888

1 Media Venture Partners, please?

2 A Well, we're primarily a brokerage firm that puts  
3 sellers and buyers together, but we also provide appraisal  
4 service for clients, and quite often an advisory service  
5 when people look at deals trying to figure out whether  
6 they'll work or not, and the component parts.

7 Q In your business do you have occasion to travel  
8 the country and see other radio stations?

9 A I travel an awful lot, yes.

10 Q If you had to estimate how many radio stations  
11 that you have inspected for purposes of your business, could  
12 you give us a rough estimate?

13 A More than 300.

14 Q More than 300.

15 In all different market sizes?

16 A All around the country.

17 Q In your experience, how many shared operations  
18 have you visited --

19 JUDGE CHACHKIN: Well, before we do that --

20 MR. BERNTHAL: I'm sorry.

21 JUDGE CHACHKIN: -- I don't know, does the Bureau  
22 have any qualifying questions for the witness? I assume  
23 you're getting to the substance now of what you're going to  
24 ask him.

25 Are you through with qualifying the witness?

1 MR. BERNTHAL: Yes, I actually had one more  
2 question that I thought might be helpful, but that's fine, I  
3 can move his qualification.

4 JUDGE CHACHKIN: Before you get to the questions,  
5 I just want to -- you'll let me know when you finish  
6 qualifying the witness so that if the Bureau has any  
7 questions, they could ask him.

8 MR. BERNTHAL: Thank you.

9 BY MR. BERNTHAL:

10 Q How many shared operations, by that I mean  
11 stations which operate under joint operating agreements,  
12 joint sales agreements, local marketing agreements or  
13 hybrids, how many such stations have you visited in your  
14 career?

15 A Probably well over a dozen physically in that  
16 capacity, and probably read the paperwork on a hundred.

17 Q And have you ever performed any professional  
18 services for either Pathfinder or Hicks?

19 A Pathfinder, no. On Hicks, Bay Bank had a loan, I  
20 think, with Dave Hicks in Kalamazoo, and I did pay a visit  
21 there to ascertain just whether or not the station was  
22 operating in the manner in which Bay Bank thought it was,  
23 and it was.

24 Q But you did not represent -- do I understand that  
25 you represented Bay Bank?

1           A     I represented Bay Bank and was paid by Bay Bank.

2           Q     Paid by Bay Bank.

3           MR. BERNTHAL: Your Honor, at this point I would  
4 move that Mr. Giddens be qualified as an expert on industry  
5 custom and practice.

6           JUDGE CHACHKIN: What customs and practice do you  
7 want to qualify him?

8           MR. BERNTHAL: I'm sorry?

9           JUDGE CHACHKIN: What is the area of customs and  
10 practices that you want to qualify him?

11           I mean, that's a general term. What specifically  
12 do you claim that he's qualified in?

13           MR. BERNTHAL: I believe that he can testify to  
14 the scope of industry practice with respect to joint sales  
15 agreements from the time of their inception to the present  
16 time, all of which period reflects the time in which the  
17 operative facts in this case occurred. I believe that he is  
18 expert on such areas as puts, calls, options, relationships  
19 between stations in a single market. I think that he has,  
20 as he's already testified, he's reviewed over 100 such  
21 arrangements in the past, and I think he can enlighten the  
22 record by showing what is typical and customary in  
23 relationships between two stations which operate at less  
24 than arms length in the marketplace.

25           JUDGE CHACHKIN: Do you have any qualifying

1 questions?

2 MR. SHOOK: Your Honor, we don't have any  
3 questions at this time.

4 JUDGE CHACHKIN: Do you have any objections to his  
5 being qualified to testify about these matters?

6 MR. SHOOK: It appears that, you know, Mr. Giddens  
7 has a background in this area. Frankly, we haven't  
8 confronted this kind of thing before, so we are not asking  
9 questions at this time in part because we really don't want  
10 to waste time. We would just as soon see this developed,  
11 and then when Mr. Giddens is finished, if we have any  
12 questions of him, we'll ask at that time.

13 JUDGE CHACHKIN: Mr. Crispin, do you have any  
14 questions?

15 MR. CRISPIN: I have no questions for the witness,  
16 Your Honor.

17 JUDGE CHACHKIN: All right, go ahead. Counsel, go  
18 ahead.

19 MR. BERNTHAL: Thank you, Your Honor.

20 BY MR. BERNTHAL:

21 Q Mr. Giddens, to provide us with appropriate  
22 background, would you describe the traditional relationship  
23 between stations located in the same community?

24 I would take you back to the period of the 1980s,  
25 roughly. What is the historic relationship between radio

1 stations located in the same community from a competitive  
2 viewpoint?

3 A They are all individually owned and competitive,  
4 and that was the nature of the FCC rules. You could only  
5 own one AM-FM in a market.

6 Q And to your knowledge, during the period of the  
7 1980s was there any -- was there any commonality of  
8 function, operation endeavor between stations located in the  
9 same markets?

10 A In the eighties, we began to see the contract  
11 engineering concept come into place where one engineer might  
12 do multiple stations, particularly in smaller markets.

13 Q And beyond that?

14 A Many may have used the same content providers,  
15 i.e., networks, but different, you know, spins on that or  
16 the same accounting firm or something like that who had  
17 expertise in broadcasting.

18 Q But the arms length nature, you have no other  
19 experience in the 1980s, at least, of arms length, of less  
20 than arms length competition?

21 A In the eighties, it was still considered not  
22 proper to do that.

23 Q How did the industry develop over the course of  
24 that decade from an economics standpoint?

25 A Well, the eighties - nineties came in, and changed

1 immediately on three scores. One, that was an easy credit  
2 time, as people know, because that was the predecessor to  
3 HLTs. You had a tremendous number, over 1,000 stations,  
4 drop in around the country, which began to crowd the  
5 industry. There was a requirement from the FCC that  
6 everybody meet their class requirements in terms of height  
7 and power, and in doing so many entrepreneur type engineers  
8 figure out you could move stations, and suddenly many of the  
9 markets faced competition they had never seen before.

10 Q As we move toward the -- into the 1990s, Mr.  
11 Giddens, what impact did the radio station industry to cause  
12 some changes in these kinds of competitive relationships?

13 A Well, beginning in about 1990-91, the HLT  
14 situation virtually --

15 JUDGE CHACHKIN: What do you mean by HLT?

16 THE WITNESS: Highly leveraged -- highly leveraged  
17 transactions. It was a government term that hit all banks  
18 with the ability to -- there had been a lot of lending based  
19 on speculation, and the government decided that that was not  
20 in the best interest of the banking industry, so they made  
21 it very tough for anybody to lend on things that weren't  
22 easily paid back.

23 BY MR. BERNTHAL:

24 Q So are you saying that because of highly leveraged  
25 transaction regulation lending opportunities dropped around

1 the end of the decade?

2 A Well, two or three things happened. We were the  
3 victim of LOTUS 1-2-3 in the eighties. A lot of people had  
4 projected when they bought and borrowed to pay for stations  
5 and these move-ins, particularly, that they were going to  
6 magically make money in year two, three or four. And for  
7 some reason the Lotus program didn't incur such things as  
8 competition, cost of money, and whether or not you could  
9 actually do what you were promising.

10 So by 1990, with the changed economic situation,  
11 about half or better of the stations were underwater, not  
12 making money, which meant that the product would suffer  
13 quite a lot, and the transaction flow, if you looked at the  
14 number of transactions through the eighties, up to about  
15 1991, in television, for instance, it was the absolute  
16 lowest. I think 50 transaction in '90 or '91 versus 100 and  
17 something in '87. In radio, it was the same. It was a very  
18 abrupt change in ownership changes.

19 JUDGE CHACHKIN: When you're talking about radio,  
20 are you talking about AM-FM or both?

21 THE WITNESS: Most are considered -- is units,  
22 although AMs pretty much followed the trends in terms of how  
23 they trade.

24 BY MR. BERNTHAL:

25 Q Now, Mr. Giddens, you went quickly over one point

1 that I'd like to have you come back to. You said that half  
2 the stations were losing money?

3 A Or more. That was the ones who would talk about  
4 it. If you took them on the basis of debt service and  
5 operating overhead versus what they took in, well over half  
6 were losing money.

7 JUDGE CHACHKIN: This is also FMs losing money?

8 THE WITNESS: Yes.

9 JUDGE CHACHKIN: I thought it was primary AMs  
10 losing money.

11 THE WITNESS: The reason I said AMs are a  
12 different category, they intended to be owned more by  
13 specialty buyers, ethnic groups, religious groups and  
14 whatnot, or in combination with an FM. And if it was in  
15 combination, the sharing of costs between the two was such  
16 that it was more difficult to tell whether they made money  
17 or not. Either the unit made money or not.

18 BY MR. BERNTHAL:

19 Q On an industry-wide basis at this point, were the  
20 losses such that there was perceived jeopardy to the  
21 industry itself?

22 A Well, to put it in perspective, in '90 through  
23 about '93, just about every bank in America contacted our  
24 firm wanting to know if we would go help them straighten out  
25 their loan portfolios. They were terrified that the

1 stations had devalued and they weren't lending money to  
2 change or alter any of the landscape, so the financing  
3 literally dried up and business was off in that period.

4 Whenever you have an overpromise situation and a  
5 tightening in the economy, then we are all retooled-based in  
6 the broadcast business.

7 Q Now, what was the reaction both at the industry  
8 and at the FCC to this credit crunch and this financial  
9 crisis that you've described?

10 A Well, the FCC, I think, realized that they had a  
11 real problem and they were going to have a number of  
12 stations that were going to, you know, be in economic  
13 disarray, and they began to look for solutions. There were  
14 programs at the NAB and other meetings in which Roy Stewart  
15 suggested that there might be ways combine certain functions  
16 of the radio operations, not so much TV at that time, to  
17 make them more efficient, more of the back room functions  
18 that weren't considered part of the licensee's important  
19 areas.

20 Q So is this when -- is this when the concept of  
21 JSAs and the like, is this when they began?

22 A JSAs, JOAs and LMAs really had their birth in  
23 about '91, '92, '93, and it was --

24 Q What would you generally describe initially as the  
25 perceived benefits of these types of relationships?

1           A     The station owners were trying to off-load the  
2     back room functions of their stations to a more efficient  
3     program. In other words, instead of each of four stations  
4     in a market having one engineer each might have one engineer  
5     serving four stations. The accounting functions were  
6     shopped around. Whoever had a pretty good bookkeeper that  
7     was competent might do more than one station. The same  
8     would be true with almost all of the functions other than  
9     the ultimate license responsibilities of programming.

10          Q     Now, did there come a time in this period when  
11     actual selling of advertising became a combined or a  
12     concentrated function between stations which were not  
13     commonly owned?

14          A     Well, yes. Joint sales agreements began because a  
15     lot of station owners perceived that their competitors may  
16     have a better sales force than they did, and they thought  
17     this is the way to solve all our problems. We'll let their  
18     sales sell our inventory, and we'll both make more money.

19                 Unfortunately, the advertisers didn't see it that  
20     way, and quite often when the two got together the did less  
21     business than they did when they were together -- when they  
22     were separate. And so there became a shifting of how JSAs  
23     worked to what does work, and quite often then they would  
24     have sales teams with one sales management group running  
25     them.

1 Q The benefits of joint sales agreements, did these  
2 impact in the same way in large and small markets or were  
3 there differences?

4 A Large markets, there just weren't any. In the  
5 smaller and mid-sized markets, they were very prevalent.  
6 Everybody was scrambling to find a way to be more efficient  
7 at that point.

8 Q And why would it be more important in the smaller  
9 markets to operate under JSA?

10 A It costs about the same for equipment, et cetera,  
11 in a small market to large, but revenues are dramatically  
12 different in the small markets.

13 Q How widespread were these kinds of combined  
14 relationships?

15 A I think just about every market that had more than  
16 two stations in it was trying to figure a way to get some  
17 efficiency out of a bad situation because revenue wasn't  
18 going up, and they were trying to make it more economical to  
19 run.

20 Q And what was the industry's perception of the  
21 FCC's position regarding joint operations?

22 A Well, as I said, a number of the conventions I  
23 went to actually had programs where FCC lawyers and FCC  
24 staff members would appear, and they would say as long as  
25 you don't change the ultimate license responsibility and you

1 follow the guidelines given to you by your lawyer and  
2 approved by the staff, then we would look favorably on you  
3 combining certain of the functions.

4 Q Let's talk about what functions could be combined.  
5 Was it customary, in your experience, to find under a joint  
6 sales agreement that there would be actually a combining of  
7 physical plant.

8 A Usually, because it would be hard to operate a  
9 combined sales force in multiple locations, they moved to  
10 either a neutral site or whoever had the largest room, and  
11 quite common to have a neutral site where they would set up  
12 sort of NUCO. It wasn't a different company. It was just  
13 an operating unit that sold for both, both or multiple  
14 facilities or so stations.

15 Q And how about non-programming staff like let's say  
16 a business office?

17 A Business office generally followed the sales  
18 because to do the accounting, receivables, traffic, et  
19 cetera, it was too unwieldy to have them operating  
20 separately, so they generally followed after the sales  
21 group.

22 Q So you're saying that it was commonplace for  
23 business offices to operate on a combined basis as opposed  
24 to a separated basis?

25 A Yes.

1 Q And how about traffic department?

2 A Traffic almost always, because the salesmen have  
3 to be able to play with the time slots and what they promise  
4 their clients in terms of the orders, are directly reflected  
5 in the traffic.

6 Q Did the stations which were separately owned, did  
7 they typically have a common reception area? Did they --  
8 how did they present themselves to the public?

9 A FCC rules at that particular time weren't finite  
10 on this. A lot of people had a common receptionist with two  
11 separate doors going into two different stations or whatnot.  
12 But in the sales agreement type arrangements, they were  
13 generally just the sales department apart from the two  
14 stations.

15 Since there was real estate involved with leases  
16 or owned building, it was more difficult to combine any  
17 other functions, but it was easy to move the business  
18 functions because they can operate anywhere.

19 Q Now, and how about technical operations?

20 A That's when we saw a rise to the contract  
21 engineer. One engineer doing multiple stations.

22 Q And you've referred to a lot of specific  
23 individual department in these separately owned stations.

24 What did stations typically do in the areas of  
25 programming?

1           A     Well, that goes back to the ultimate license  
2     responsibility of what the programming or the brand or the  
3     style of that particular station is. And that was one of  
4     the sacrosanct areas that the FCC didn't say they would look  
5     favorably on any type arrangements in. But as a practical  
6     matter quite often a qualified TD in a market would be able  
7     to do a country NAC, and urban or whatever kind of format  
8     because they knew the business, and quite often these people  
9     were paid just like an outside consultant would be to handle  
10    different functions.

11               Well, how did they deal with the issue of  
12    management then?

13           A     They could only operate within the parameters  
14    given to them by the licensee. If you're a country station  
15    that runs five hours of news a week, that program director  
16    couldn't alter that.

17           Q     And if the management gave direction about --  
18    well, you give an example of news. How was news generally  
19    obtained in the marketplace?

20               JUDGE CHACHKIN: Well, news has always been an  
21    expensive area in the broadcasting business, and some  
22    stations choose to get their news from outside vendors,  
23    i.e., ABC, CBS, Westwood, et cetera, and do primarily  
24    national news. On the local level, newspapers have given  
25    okay for some of their editors to provide news services to

1 stations. Metro Traffic sells it in a number of markets, as  
2 does Shadow. News was sort of an available on what it cost.

3 In other words, instead of having a two-person  
4 news staff, you could rent them from another station, and  
5 they fit your program guidelines that was more efficient.

6 Q Was the notion of news production and the  
7 attaching of news, how was it -- how did it work? How  
8 widespread was that practice under -- in this time frame?

9 A In the nineties, it became very widespread because  
10 that news is an expensive item and it doesn't necessarily  
11 bring you back dollars.

12 Q In your experience in markets, let's say roughly  
13 around market size 150, which is the market size, I think  
14 we're dealing here with 158, but in that general size of  
15 market how many stations actually would produce their own  
16 news in the 1990s?

17 A Probably less than a third at that point.

18 JUDGE CHACHKIN: What do you mean by produce news?  
19 I mean, read it off the wire service?

20 THE WITNESS: Have their own -- well, the news  
21 operation as a practical matter, the listeners always have a  
22 different view of where it comes from, but your analogy is  
23 correct. Some stations had a rip and read type operation  
24 where they would just take it off the wire and read it  
25 directly with no amplification or local stories. Others

1 actually had full service news operations that were able to  
2 have beat reporters and, you know, develop stories,  
3 particular things that were going to happen in the future.  
4 A road was going to be closed and redone or whatnot, they  
5 would be able to talk about it before it actually occurred.

6 But that kind of operation was much more  
7 expensive, and many stations found as long as they fulfilled  
8 the audience's requirement that there be news there, and it  
9 was somewhat credible, that they could get it from any  
10 source that they could efficiently afford it from.

11 JUDGE CHACHKIN: So you're talking about combined  
12 local news operation?

13 THE WITNESS: Yes.

14 BY MR. BERNTHAL:

15 Q And in your experience, you say only about a third  
16 of the radio stations produced news independently?

17 A Maybe a little bit higher than that, but not much.

18 And this is in the nineties period now. Prior to  
19 that everybody tried to have their one local newsperson and  
20 some semblance of autonomy, but it became very difficult in  
21 the nineties to do that.

22 Q Now, in your experience, was the FCC -- what you  
23 knew in the industry, you're not an FCC employee obviously,  
24 but from your experience in the industry was the FCC  
25 generally aware of these kinds of practices?

1           A     I think they were aware of it based on the number  
2     of program and whatnot and memos that the lawyers circulated  
3     out of Washington suggesting ways to do these things that  
4     were in keeping with the spirit of the FCC's intent.

5                 Since there were no direct "how to do it" rules  
6     from the FCC, everything was subject to interpretation, and  
7     sort of staff guidance, I guess.

8           Q     Did you ever -- did you encounter any operations  
9     in your many travels at stations in which stations used  
10    combined management?

11          A     Yes. It started out that each owner, because they  
12    had been competitive with competition, wanted to keep their  
13    own manager, and it's actually an FCC requirement that  
14    someone be the quote/unquote "manager" of the facility.

15                But as a practical matter, in each market there  
16    are generally two or three individuals who are much better  
17    at generating revenue and controlling costs than others.  
18    And so the weaker stations would generally look to those  
19    operators who had the good management to help them out. And  
20    while the titles might have remained for FCC purposes that  
21    each station had a separate manager, as a practical matter  
22    probably a general manager was overseeing several.

23          Q     Well, if you had this fairly common practice of  
24    common management, again, how did licensees observe their  
25    obligation to remain independent?

1           A     Well, again, as in the program director analogy,  
2     which I always looked at that as almost a clerical function  
3     because they really don't control the programming, the  
4     programming can't walk into WTOP tomorrow morning and say,  
5     "We're not going to be a news station anymore." But as  
6     these people followed the dictates of the ownership, and  
7     obviously if they are paid, you know, pro rata or however  
8     they are paid, they're going to do what they are told.  
9     The managers, the same way. They are functionaries of the  
10    ownership.

11          Q     I'd like to ask you about the financial  
12    relationships between stations under JSAs.

13                In your experience, was there a set formula for  
14    the way stations related to each other when they had a  
15    common sales staff or were there a variety of arrangements?

16          A     It was a variety of arrangement because, again,  
17    these people had been competitors, and each wanted to make  
18    sure they didn't give their competitor more money than they  
19    should have, so they tried to come up with formulas based on  
20    ratings. You know, I've got a 10 share, you've got a eight,  
21    so therefore I get a little more money than you do. Or I  
22    built \$2 million and you built \$1 million, so therefore I  
23    should get pro rata more, twice as much as you do.

24                And what generally happened is they came to sort  
25    of a middle ground formula where each station would do

1 certain things, and if certain profit levels were met, they  
2 would move on to that. These were almost all work in  
3 progress. I saw very few of them come to fruition on the  
4 formula on which they started.

5 Q So in some cases did some stations just buy all  
6 the advertising time on a competitor?

7 A Now, that's a -- that's a time brokerage agreement  
8 now, or an LMA. In the JSAs, which were the original joint  
9 sales situations, programming and sales were separate.

10 Q No, I was asking about the advertising time, not  
11 the programming time.

12 A Oh.

13 Q Did some stations just buy them outright?

14 A Yes.

15 Q And were there examples of splitting cash flows,  
16 splitting revenues? I mean, how did these things get  
17 negotiated? How did they work?

18 A They were nightmares. I used to have more hair.  
19 Because each owner basically didn't trust the  
20 other, they had been competing with them for 10 years or so,  
21 and didn't think that he would treat them fairly in a  
22 situation where they both really needed it, splitting cash  
23 flow based on ratings or revenue produced. It was very hard  
24 to determine which station was causing the ultimate sale  
25 when you had several being sold as a package.